holder and the corporation[7] and it can be said that the shareholder has consented in advance to representation by the corporation in matters of appraisal.[8]

By this decision the uncertainty which confronted lawyers representing either corporate clients or dissenting shareholders as a result of the Ohio decision has been dispelled. It is clear now that the corporation must take some action when dissenting shareholders set a valuation upon their shares, or be bound to pay the amount demanded. If the corporation makes a counter offer and neither side asks for any appraisal the conclusive presumption in favor of such counter offer would likewise satisfy the requirements of due process and the majority shareholders would be bound thereby, as would the dissenters. The effect upon the rights of the majority would be the same if the corporation agreed to pay the price set by the dissenters.

If a majority shareholder has actual notice of the demands of the dissenters and learns that the corporation is doing nothing to comply with the statute, he had better take steps to persuade the directors to act. If upon demand by the majority shareholder the board refuses to do anything to protect the interests of the corporation, the shareholder may bring suit to compel the board to comply with the statute or may himself, in a represenative action, ask for an appraisal.[9] It is not necessary for him to show present injury if he can show threatened irreparable injury.[10] J. M. B.

CRIMINAL LAW

Criminal Law — Lotteries — Bank Night.

Plaintiff, owner of a motion picture theatre, attempted to enjoin interference by the police with a scheme whereby every adult member of the community was invited to register his or her name in a book in the theatre lobby, such registration being free of charge and not dependent upon prior purchase of tickets to the theatre. Such registrants were given a number which they were to hold, making them eligible to participate

[7] Wegner v. Wegner, 101 Ohio St. 22, 126 N.E. 892 (1920). Under the reserved power of the state, conferred by Ohio Constitution, Art. XIII, sec. 2, the shareholder is bound by the pertinent statutes passed after he becomes a shareholder.

[8] Lattin, *A Reappraisal of Appraisal Statutes* (1940) 38 Mich. L. Rev. 1165.

[9] Such right is a derivative one and the suit should be brought by the shareholder on behalf of the corporation.

[10] Dodge v. Woolsey, 18 How. 331, 15 L. Ed. 401 (1856); Zinn v. Baxter, 65 Ohio St. 341, 62 N. E. 327 (1901); 13 Fletcher, Cyc. Corp. (Perm. Ed.) sec. 5939. But compare Zimmerman, J., who thought *contra* in the *Voeller* case, 136 Ohio St. at 433 26 N.E. (2d) at 446.

in a weekly drawing for a sum of money, given to the person who held the number drawn from a wheel. It was not necessary that the person be present in the theatre to win, it being sufficient to be outside the theatre, in which case he might enter free, within a specified number of minutes, to claim his prize. *Held*: Injunction refused. The plan includes the elements of, and constitutes, a lottery, a scheme of chance within the scope of and forbidden by Ohio General Code, section 13063 *et seq.*[1]

The definition of a lottery, which seems to be consistent with the numerically superior decisions, and in accord with the instant case, states: Where a prize is to be given upon the happening of a contingency to be determined by chance, to one who has paid a valuable consideration for the opportunity to participate in the result, a lottery is constituted.[2]

The elements of chance and prize are easily found in the bank night situations. It is on the question of consideration that a major split of authority has been based. One line of authority holds that the consideration which passes from the donee of the chance to the donor of the chance must be intrinsically valuable, given in addition to whatever normally would pass from those of which class the donee is a member, to those of which class the donor is a member.[3] This requirement is not insisted upon by some courts, which hold that part of the admission price is paid for a better chance of winning a prize;[4] or that prizes were paid from admission money;[5] or that inferior pictures were shown on bank nights;[6] or that a controlling inducement of purchasing a ticket is the lure of the prize.[7] Consistent with this view, some courts hold that where there is no necessity of the purchase of a ticket as a condition precedent to registration and subsequent possibility of acquiring a prize, there is no additional element present, which will constitute consideration, hence no lottery.[8] This argument has been denied by courts, where it was found that there was difficulty involved in registering without having purchased a ticket.[9]

[1] Troy Amusement Co. v. Attenweiler, 64 Ohio App. 105, 28 N.E. (2d) 207 (1940).

[2] BRILL, CYCLOPEDIA CRIMINAL LAW, sec. 1101; 17 R.C.L. 1222; Robb and Rowley Inc. *et al.* v. State, 131 Tex. 188, 127 S.W. (2d) 221 (1939); Darlington Theatres Inc. v. Coker Sheriff *et al.*, 190 S.C. 282, 2 S.E. (2d) 782 (1939); St. Peter v. Pioneer Theatre Corp., 227 Iowa 1391, 291 N.W. 164 (1940); State v. Devroux, 14 Ohio Op. 283 (1939).

[3] State v. Big Chief Corp., — R.I. —, 13 A. (2d) 236 (1940); St. Peter v. Pioneer Theatre Corp., 227 Iowa 1391, 291 N.W. 164 (1940).

[4] Commonwealth v. Heffner, 300 Mass. —, 24 N.E. (2d) 508 (1939); Iris Amusement Corp. v. Kelly, 366 Ill. 256, 8 N.E. (2d) 648 (1937).

[5] State *ex rel.* Dussault v. Fox Missoula Theatre Corp., 110 Mont. —, 101 P. (2d) 1065 (1940).

[6] Central States Theatre Corp. v. Patz, 11 F. Supp. 566 (1935).

[7] Kent v. City of Chicago *et al.*, 301 Ill. App. 312, 22 N.E. (2d) 799 (1939).

[8] State of Iowa v. G. P. Hundling, 220 Iowa 1369, 264 N.W. 688 (1936); Park Theatre Corp. v. Mook, 87 P.L.J. 101 (1939).

[9] Wink v. Griffith Amusement Co., 129 Tex. 40, 100 S.W. (2d) 695 (1936); People v. Miller, 271 N.Y. 44, 2 N.E. (2d) 38 (1936).

It is thus seen that there is an important difference of opinion based upon the interpretation of what constitutes intrinsically valuable consideration, while admitting in effect that there must be such element before a lottery situation is created. But the second line of authority, which is representative of the instant case, holds that there need not be any intrinsically valuable consideration passing from the donee of the chance to the donor of the chance, but rather, *any* valuable consideration. Under this interpretation, the question in regard to consideration would not be, has the donee done anything he was not legally bound to do or parted with a right, the detriment aspect, but rather has the donor of the chance received anything of value for which he has bargained, the benefit aspect. Thus it has been held, in accord with the present case, that the increased patronage derived from bank night schemes, or the advertising values attained therefrom, or because there is a tendency to buy a ticket when one registers or when the chances are drawn, or a combination of the factors, constitutes consideration for the scheme, so as to establish a lottery.[10]

Lottery statutes were passed for the purpose of avoiding the vicious effects upon those other than the promoter, which effects result both from the wasting of money and from the gambling spirit. This in effect would seem to be for the purpose of preventing false economic evaluations by those upon whose practical evaluations, the sustenance of whole families often depends.[11] Thus, when the question before a court is: "Will the combination of a particular set of facts be deemed a lottery?" it would seem better policy to decide the question of consideration as does the case at hand so that the purpose of the statutes could more easily be carried out, and hold that increased patronage and advertising are sufficient consideration to fulfill the lottery requirement.

R. R. R.

[10] Robb & Rowley United Inc. *et al.* v. State, 131 Tex. 188, 127 S.W. (2d) 221 (1939); Affiliated Enterprise v. Waller, 5 A. (2d) 257 (1939); McFadden v. Bain, 162 Ore. 250, 91 P. (2d) 292 (1939); *contra,* Park Theatre Corp. v. Mook, 87 P.L.J. 101 (1939).

[11] Harriman Institute of Social Research v. Carrie Tingly Crippled Children's Hospital, 43 N.M. 1, 84 P. (2d) 1088 (1939); St. Peter v. Pioneer Theatre Corp., 227 Iowa 1391, 294 N.W. 164 (1940).